

**REMARKS/ARGUMENTS**

Claims 1-21 are pending in the present application. Claims 1, 10 and 19 are independent claims.

**35 U.S.C. 102(b) - Iwai**

Claims 1-5, 9-14, 18 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,815,795 ("Iwai"). Applicant respectfully traverses this art grounds of rejection.

Iwai is directed to an oscillation detecting system for a wireless repeater. Iwai is directed to a standard repeater that includes circuitry to amplify a wireless signal. In the non-Final Office Action of 2/28/2008, the Examiner alleges that "Iwai teaches ... a wireless repeater capable of automatically detecting its own oscillation with accuracy; so processing communication signals in a wireless communication device circuit embedded in this wireless repeater is inherent and using the communication signals processed at the wireless communication circuit to determine if the repeater system is in oscillation" (See Page 3 of the 2/28/2008 Office Action, Emphasis added).

**The Examiner's allegation of inherency regarding Iwai's teachings is improper**

Iwai's repeater does not inherently include a wireless communication device circuit and/or using the communication signals at the wireless communication device circuit to determine if the repeater system is in oscillation.

Regarding inherency, Applicant directs the Examiner to MPEP 2112. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would

result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients).

Turning to Iwai, Iwai's repeater detects and processes the envelope of the output signal of the repeater to determine if the repeater is in oscillation, as described in Iwai with respect to FIG.

4. With regard to FIG. 4 of Iwai, Iwai states the following:

The oscillation detecting apparatus 1 is shown in FIG. 4 as comprising a band-pass filter 14 besides the envelope detector 11 and the low pass filer 12. The envelope detector 11 is designed to receive a signal and produce an envelope of the received signal. The envelope detector 11 may be considered to be a device producing a power level signal varied in proportion with an amplitude of the output signal. Specifically, the power level signal is increased when the amplitude of the output signal is increased. Conversely, the power level signal is decreased when the amplitude of the output signal is decreased. The power level signal may be not necessarily direct proportional to the amplitude of the output signal. For example, the power level signal may be formed on the basis of the output signal through square detection techniques. The power level signal corresponds to the envelope of the output signal but, if desired, the power level signal may be a signal showing fluctuation of a physical value that is representative of intensity of the output signal.

*(Emphasis added) (See Column 7, lines 4-22 of Iwai)*

In view of the excerpted portion of Iwai produced above, the repeater of Iwai merely receives, amplifies, and re-transmits received signals, and uses the envelope of the output signal to determine an oscillation condition. In other words, the oscillating detecting apparatus 11 determines when the output power level of the repeater is above a threshold, and if so,

determines that the repeater is in oscillation. Thus, whether communication signals are present within the envelope is irrelevant.

To put this in another way, assume that Iwai's repeater is operating and communication signals are not present. Iwai's repeater continues to receive and rebroadcast noise or static that it receives in the absence of these communication signals. If the amplified noise level exceeds the envelope power threshold that is associated with oscillation in Iwai, then oscillation is determined even though no communication signals are present. The fact that this example is even possible is sufficient to defeat the Examiner's allegation of inherency.

*Iwai does detect repeater oscillation based on signal amplitude, not processed wireless communication signals*

As discussed above in the inherency section, and also in previous responses filed by Applicant, because Iwai determines oscillation based only on the amplitude of the repeater's output signal, Applicant respectfully submits that Iwai cannot disclose or suggest "using the communication signals processed at the wireless communication device circuit to determine if the repeater system is in oscillation" as presently recited in independent claim 1 and similarly recited in independent claims 10 and 19. Again, the wireless communication signals routed through Iwai's repeater are not used by the oscillation detecting apparatus 11 to determine anything (they are simply amplified and re-transmitted), and the oscillation detecting apparatus 11 considers only envelope amplitude. As will be appreciated, using the amplitude of the entire envelope (e.g., which can include noise, multipath components and/or other forms of interference) cannot be considered to be the same thing as using actual communication signals that are processed at a communication device. The presence or absence of communication

signals in Iwai does not affect the determination of whether Iwai's repeater is in oscillation because only output amplitude is considered.

In view of the above remarks, Applicant respectfully submits that Iwai cannot disclose or suggest "using the communication signals processed at the wireless communication device circuit to determine if the repeater system is in oscillation" as recited in independent claim 1 and similarly recited in independent claims 10 and 19.

As such, claims 2-5, 9, 11-14, 18 and 19, dependent upon independent claims 1 and 10, respectively, are likewise allowable over Iwai at least for the reasons given above with respect to independent claims 1 and 10, respectively.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

**35 U.S.C. 103(a) – Iwai in view of Ness**

Claims 2, 11 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwai in view of U.S. Patent No. 5,767,788 ("Ness"). Applicant respectfully traverses this art grounds of rejection.

Applicant agrees with the Examiner in that Iwai fails to disclose "establishing a call from the wireless communication device circuit to a base station" as recited in claims 2, 11 and 21. However, the Examiner alleges the Ness cures this particular deficiency of Iwai. Initially, Applicant submits that even if the Examiner were correct regarding this one particular deficiency, Ness is similarly deficient as is Iwai in disclosing or suggesting "using the communication signals processed at the wireless communication device circuit to determine if the repeater system is in oscillation" as recited in independent claim 1 and similarly recited in independent claims 10, and claims 2, 11 and 21 dependent thereon are allowable at least by virtue of their dependency upon claims 1 and 11, respectively.

Turning to Ness in more detail, Ness is directed to a computer aided dispatch and locator cellular system. Ness discloses a cellular transceiver unit 11 that “acts as a cellular repeater, sending the information over the short range (EM) signal from the (MDT) by transmitting it on RF to the cells 2” (See Column 5, lines 15-17 of Ness). However, Ness is entirely silent regarding any manner of determining oscillation at the cellular transceiver unit 11, and is certainly silent regarding “determining oscillation if the call cannot be established” as recited in claims 2 and 11. Ness does not discuss what happens if a call cannot be established, and does not disclose or suggest determining an oscillation condition of the call cannot be established. Likewise, Iwai only discloses determining an oscillation condition based on output power amplitude. The repeater in Iwai is not capable of making calls, let alone determining oscillation based on a failure to make a call.

Accordingly, Applicant respectfully submits that Iwai in view of Ness cannot disclose or suggest “establishing a call from the wireless communication device circuit to a basic station” and “determining oscillation if the call cannot be established” as recited in claims 2 and 11. Claim 21, dependent upon claim 2, is likewise allowable over Iwai in view of Ness at least by virtue of its dependency upon claim 2.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

**35 U.S.C. 103(a) – Iwai in view of Seki**

Claims 6-9 and 15-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwai in view of US Publication No. 20040248581 (“Seki”). Applicant respectfully traverses this art grounds of rejection.

Initially, Applicant agrees with the Examiner in that Iwai fails to disclose or suggest “wherein using the wireless communication device circuit comprises: obtaining signal to noise ratio value to measure the signal quality” (Page 5 of the 2/28/2008 Office Action) and “wherein using the wireless communication device circuit comprises: receiving at least one closed loop power control command from the base station” (Pages 5-6 of the 2/28/2008 Office Action). The Examiner alleges, however, that Seki discloses these particular deficiencies of Iwai. However, even assuming for the moment that the Examiner is correct with regard to the teachings of Seki, and further that an adequate rationale for combining Seki and Iwai is present (which Applicant does not admit), Applicant respectfully submits that a review of Seki indicates that Seki fails to cure the suggestion and disclosure deficiencies of Iwai with respect to independent claims 1 and 10 as discussed above.

As such, claims 6-9 and 15-18, dependent upon independent claims 1 and 10, respectively, are likewise allowable over Iwai in view of Seki at least for the reasons given above with respect to independent claims 1 and 10.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

Reconsideration and issuance of the present application is respectfully requested.

**Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

**Deposit Account Authorization**

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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